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Wingfield Nevada Group Holding Company, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

WINGFIELD NEVADA GROUP
HOLDING COMPANY, LLC, a
Nevada limited liability company,

CASE NO.: CV11-03003

DEPT. NO.: 15

Plaintiff,

vs.

WHITTEMORE PETERSON
INSTITUTE FOR NEURO-IMMUNE
DISEASE, a Nevada Non-Profit
Corporation; and DOES I
through X and ROE CORPORATIONS
XI through XX,

Defendants.

COMPLAINT

Wingfield Nevada Group Holding Company, LLC ("WNG") alleges as follows:

OVERVIEW

1. The Whittemore Peterson Institute for Neuro-Immune Disease ("WPI") has improperly and without payment received from WNG \$442,915.00 worth of corporate aircraft benefit and use. Through the machinations and manipulations of Annette Whittemore, serving as President of WPI, and her husband Harvey Whittemore, serving as manager of WNG, WNG was not compensated for WPI's repeated use of WNG's corporate aircraft. A contract was created by the Whittemores' actions and conduct requiring WPI to compensate WNG for the fair and reasonable market value of WPI's use of WNG's aircraft. Harvey Whittemore ("Whittemore")

1 has admitted to WNG that WPI's use of WNG's aircraft created an obligation by WPI to pay
2 WNG for WPI's constant and frequent use of WNG's aircraft. Despite WNG's demand for
3 payment, WPI refuses to reimburse WNG for WPI's use of WNG's aircraft.

4 **PARTIES**

5 2. WNG is a Nevada limited liability company doing business in the State of
6 Nevada.

7 3. WPI is a Nevada corporation doing business in Washoe County, State of Nevada.

8 4. The true names and capacities, whether individual, corporate, associate or
9 otherwise, of the Defendants DOES I through X, inclusive, and ROE CORPORATIONS XI
10 through XX, inclusive, and each of them, are unknown to Plaintiff at the present time, and
11 Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff is informed and
12 believes and thereon alleges that each of the Defendants designated herein as DOES I through X
13 and ROE CORPORATIONS XI through XX are responsible for the claims and damages alleged
14 herein. Once discovery has disclosed the true identities of such parties, Plaintiff will ask leave of
15 this Court to amend its Complaint to insert the true names and capacities of said Defendants
16 DOES I through X, inclusive, and ROE CORPORATIONS XI through XX, inclusive, and join
17 such Defendants in this action.

18 **GENERAL ALLEGATIONS**

19 5. In early 2004, Harvey Whittemore ("Whittemore"), individually and on behalf of
20 The Lakeshore House Limited Partnership, sold 50% of his interest in various corporations to
21 Thomas A. Seeno and his respective entities. The majority of those interests were subsequently
22 transferred into a new company, WNG, formed in 2005. Albert D. Seeno, Jr. later acquired
23 ownership interests in WNG from Whittemore and Thomas A. Seeno.

24 6. From January 2005, Whittemore was obligated to protect the interests of WNG
25 while acting as its manager. While acting as its manager, Whittemore owed WNG and its
26 members fiduciary duties of loyalty, candor, fairness, and full disclosure.

27 7. As manager of WNG, Whittemore had duties to protect the assets of WNG and to
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1 use said assets, including corporate aircraft, for the benefit of WNG.

2 8. While Whittemore was acting as manager of WNG, his wife Annette Whittemore
3 ("Annette") was President of WPI.

4 9. During the period of time that Whittemore was manager of WNG and while
5 Annette was President of WPI, the Whittemores colluded and conspired to allow WPI excessive,
6 free use of WNG corporate assets, including use of WNG's corporate aircraft.

7 10. WNG at all material times was and is entitled to be compensated for WPI's use of
8 WNG's aircraft.

9 11. Pursuant to the terms of the applicable WNG Operating Agreement, Whittemore
10 had a duty to perform his managerial duties of WNG in good faith and with loyalty, candor and
11 fairness to WNG and its members. Also, at all times material hereto, Whittemore was also acting
12 as WNG's attorney and as such exerted control over the language of the Operating Agreement
13 and did so as an exercise in self-dealing abuse.

14 12. From February of 2007 through 2009, Whittemore exercised complete control
15 over the financial books and records of WNG.

16 13. As Whittemore relinquished his interests in and control of WNG, corporate
17 representatives of WNG commenced a review and inspection of WNG's books and records. In
18 the summer of 2010 through the early months of 2011, the flight logs of WNG's corporate
19 aircraft were scrutinized.

20 14. WNG has discovered WPI's extensive use of WNG's aircraft and has determined
21 that WPI has utilized WNG's aircraft from November of 2005 through March of 2010. The fair
22 commercial value of such use is \$359,991.00.

23 15. Adding a legal interest to the fair market value of WPI's use of WNG's aircraft,
24 WPI owes WNG the sum of \$442,915.00 as of September 12, 2011.

25 16. On September 12, 2011, WNG made a demand on WPI and Annette that WPI
26 reimburse WNG for WPI's use of WNG's aircraft.

27 17. In response to WNG's demand, WPI improperly denies that a contract exists

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1 between WPI and WNG. WPI has refused and failed to pay for its use of WNG's aircraft and
2 WPI now contends that WPI had no contract for use of WNG's aircraft.

3 18. WPI is obligated to pay WNG all sums due, plus interest on the account stated and
4 WPI is obligated to compensate WNG for the attorney's fees and court costs incurred in pursuing
5 this matter.

6 I.

7 **FIRST CLAIM FOR RELIEF**

8 **(Unjust Enrichment)**

9 19. All prior allegations and paragraphs are incorporated herein as though fully set
10 forth.

11 20. From 2004 through September 2010, WPI used WNG's aircraft without paying
12 for its use of said aircraft.

13 21. The fair and reasonable value of WPI's use of WNG's aircraft for the period of
14 time from 2004 to September of 2010 is \$359,991.00. With interest as of September 12, 2011,
15 WPI has been unjustly enriched in the amount of \$442,915.00.

16 22. WNG is entitled to recover attorney's fees and court costs.

17 II.

18 **SECOND CLAIM FOR RELIEF**

19 **(Conspiracy)**

20 23. All prior allegations and paragraphs are incorporated herein as though fully set
21 forth.

22 24. Whittemore and WPI, acting in concert, entered into a tacit, illegal agreement to
23 allow WPI to receive the benefit and use of WNG's aircraft in such a manner whereby WPI
24 benefitted from such use without having to adequately and reasonably compensate WNG for
25 WPI's use of WNG's aircraft.

26 25. During all times in which the conspiracy existed, Whittemore was acting outside
27 of the scope of his fiduciary duties to WNG and his conspiratorial conduct is therefore not
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1 imputed to WNG.

2 26. WPI and Whittemore conspired to have Whittemore breach his fiduciary duties to
3 WNG by allowing WPI to utilize WNG's corporate aircraft without WPI having to pay the fair
4 and reasonable value for such use.

5 27. Whittemore is neither an agent or employee of WPI.

6 28. As a proximate result of WPI's conspiracy, WNG has been damaged in excess of
7 \$10,000.00 and is entitled to punitive damages, legal fees and costs of court.

8 **III.**

9 **THIRD CLAIM FOR RELIEF**

10 **(Aiding and Abetting Breach of Fiduciary Duties)**

11 29. All prior allegations and paragraphs are incorporated herein as though fully set
12 forth.

13 30. From 2004 through September of 2010, WPI aided and abetted Whittemore in
14 breaching his fiduciary duties to WNG.

15 31. While acting as manager of WNG, Whittemore owed WNG, its members and
16 owners, fiduciary duties of honesty, candor, full disclosure and fairness.

17 32. Whittemore was induced and enticed by WPI to allow WPI to use WNG assets
18 without compensation, including WNG's corporate aircraft, resulting in WPI's aiding and
19 abetting Whittemore to violate his duties of honesty, candor, full disclosure and fairness to
20 WNG.

21 33. As a proximate result of WPI's aiding and abetting Whittemore to violate his
22 fiduciary duties to WNG by allowing WPI to use WNG's aircraft without fair compensation,
23 WNG has been damaged in excess of \$10,000.00 and is entitled to an award of attorney's fees
24 and court costs.

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1 IV.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Implied Contract)**

4 34. All prior allegations and paragraphs are incorporated herein as though fully set
5 forth.

6 35. By and through the conduct of WPI and WNG concerning WPI's use of WNG's
7 aircraft, WPI impliedly contracted with WNG to pay the fair, reasonable value for its use of
8 WNG's aircraft.

9 36. WNG performed the contract by allowing WPI to use WNG's aircraft.

10 37. WPI breached the implied contract by refusing and failing to pay a fair and
11 reasonable value for its use of WNG's aircraft.

12 38. WNG sustained damages in the amount of \$395,991.00, plus interest, for a total of
13 \$442,915.00 as of September 12, 2011, as a direct and proximate consequence of WPI's breach
14 of the implied contract.

15 V.

16 **FIFTH CLAIM FOR RELIEF**

17 **(Quantum Meruit)**

18 39. All prior allegations and paragraphs are incorporated herein as though fully set
19 forth.

20 40. Based upon the equitable principles of quantum meruit, WPI owes WNG
21 \$442,915.00 because of WPI's use of WNG's aircraft.

22 VI.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Account Stated)**

25 41. All prior allegations and paragraphs are incorporated herein as though fully set
26 forth.

27 42. As of September 12, 2011, WNG was owed \$442,915.00 by WPI as an account
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1 stated because of WPI's use of and benefit from using WNG's aircraft.

2 WHEREFORE, WNG seeks judgment as follows:

- 3 1. For compensatory damages according to proof in excess of \$10,000.00;
- 4 2. For the fair value of the amount WPI was unjustly enriched by its use of WNG's
- 5 aircraft according to proof;
- 6 3. For punitive damages in an amount no less than three times compensatory
- 7 damages according to proof;
- 8 4. For attorney's fees and court costs; and
- 9 5. For such other and further relief as the Court determines to be appropriate.

10 **AFFIRMATION**

11 **Pursuant to NRS 239B.030**

12 The undersigned does hereby affirm that this document does not contain the social

13 security number of any person.

14 Dated this 13th day of October, 2011.

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16 A Professional Corporation
17 71 Washington Street
18 Reno, Nevada 89503

19 
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Attorneys for Plaintiff

20 J:\WPData\Krr\1219.005-WPI Aircraft\P-Complaint-Aircraft.wpd

Jayne Ferretto

From: eflex@washoecourts.us
Sent: Friday, October 14, 2011 8:40 AM
To: Kent Robison
Subject: NEF: WINGFIELD NV GROUP VS. WHITTEMORE PETERSON (D: Complaint - Civil: CV11-03003

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CV11-03003
Judge: DAVID HARDY

Official File Stamp: 10-13-2011:18:20:05
Clerk Accepted: 10-14-2011:08:39:19
Court: Second Judicial District Court - State of Nevada
Case Title: WINGFIELD NV GROUP VS. WHITTEMORE PETERSON (D
Document(s) Submitted: Complaint - Civil
Filed By: KENT ROBISON, ESQ.

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KENT ROBISON, ESQ. for WINGFIELD NEVADA GROUP
HOLDING CO.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

WHITTEMORE PETERSON INSTITUTE FOR NEURO-
IMMUNE DISEASE

10/14/2011